

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

Andrew S. Turkish, Esq. (PA ID NO. 57366)  
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Attorneys for Defendant,  
PetSmart, Inc. (Improperly pleaded as PetSmart)

-----X MARIA CHIRICO,  Plaintiff,  v.  PETSMART, INC.,  Defendants. -----X	COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PENNSYLVANIA  DECEMBER TERM, 2013 CASE ID. NO.: 131201440  CIVIL ACTION NO. _____
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**NOTICE OF REMOVAL**

**To: The Judges of the United States District Court, Eastern District of Pennsylvania**

On Notice To:

Arthur S. Novello, Esq.  
Dashevsky, Horwitz, Kuhn and Novello, P.C.  
1315 Walnut Street, 12<sup>th</sup> Floor  
Philadelphia, Pa 19107-4712  
Attorneys for Plaintiff

**PLEASE TAKE NOTICE** that Defendant PetSmart, Inc. (improperly pleaded as PetSmart) hereby removes the above-entitled action from the Court of Common Pleas, Philadelphia County, Pennsylvania to the United States District Court, Eastern District of Pennsylvania pursuant to 28 U.S.C. Sections 1332, 1441 and 1446.

In support of the Notice of Removal, Defendant states:

1. On December 14, 2013, Plaintiff filed a Complaint in the Court of Common Pleas, Philadelphia County, Pennsylvania. The Complaint alleges that on June 22, 2012, while at PetSmart, Plaintiff, Maria Chirico, slipped and fell and "sustained severe and permanent internal and external injuries in about the head, body and limbs", which includes injuries to her neck, back, knees, and legs, including a torn meniscus. Plaintiff alleges damages for pain and suffering, medical expenses and lost wages. A copy of Plaintiff's Complaint is attached hereto as **Exhibit "A"**. Although I do not know if plaintiff had surgery or is contemplating surgery, my file reflects that plaintiff's medical expenses exceed \$35,000.
2. On January 9, 2014, I sent plaintiff's counsel a letter and stipulation requesting that he stipulate that the amount in controversy is \$75,000 or less. See **Exhibit "B"** attached hereto. I spoke to plaintiff's counsel on the same date and he advised he would get back to me. Having not heard back from the plaintiff, I must assume he cannot stipulate to damages and therefore have decided to file this removal application.
3. Plaintiff's Complaint states that Plaintiff resides in Philadelphia, Pennsylvania.
4. Defendant, PetSmart, Inc., is a Delaware corporation with its principal place of business at 19601 North 27<sup>th</sup> Avenue, Phoenix, Arizona 85027.
5. Accordingly, complete diversity exists between Plaintiff and the Defendant in this case. The United States District Court, Eastern District of Pennsylvania, has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it arises between citizens of different states and the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

6. PetSmart, Inc. received a copy of the initial pleading in this action, through service or otherwise, on or about December 17, 2013, when the Complaint and Jury Demand were served on PetSmart.
7. As of this date, Defendant has not filed a responsive pleading in the action commenced by Plaintiff in the Court of Common Pleas, Philadelphia County, and no other proceedings have transpired in that action.

WHEREFORE, Defendant, PetSmart, Inc., prays that the above-captioned matter, now pending against it in the Court of Common Pleas, Philadelphia County, Pennsylvania, be removed therefrom to the United States District Court, Eastern District of Pennsylvania.

CLAUSEN MILLER P.C.

Dated: January 15, 2014

By: 

Andrew S. Turkish, Esq.  
Clausen Miller P.C.  
Attorneys for Defendant,  
PetSmart, Inc.  
100 Campus Drive, Suite 112  
Florham Park, NJ 07932  
Phone: (973) 410-4130

**CERTIFICATE OF SERVICE**

It is hereby certify that a true and correct copy of the within-captioned Notice of Removal as well as Notice of Filing Notice of Removal was served via overnight mail to:

Arthur S. Novello, Esq.  
Dashevsky, Horwitz, Kuhn and Novello, P.C.  
1315 Walnut Street, 12<sup>th</sup> Floor  
Philadelphia, Pa 19107-4712  
Attorneys for Plaintiff


and

Office of the Prothonotary  
First Judicial District of Pennsylvania  
468 City Hall, Room 284  
Philadelphia, PA 19107

CLAUSEN MILLER P.C.

Dated: January 15, 2014

By:

  
Andrew S. Turkish, Esq.  
Clausen Miller P.C.  
Attorneys for Defendant,  
PetSmart, Inc.  
100 Campus Drive, Suite 112  
Florham Park, NJ 07932  
Phone: (973) 410-4130

# EXHIBIT A

DASHEVSKY, HORWITZ,  
KUHN AND NOVELLO, P.C.  
By: ARTHUR S. NOVELLO, ESQUIRE  
Identification No. 46685  
1315 Walnut Street, 12th Floor  
Philadelphia, Pennsylvania 19107  
P: (215) 546-4488  
F: (215) 732-6220  
E-Mail: [anovello@dashevskylaw.com](mailto:anovello@dashevskylaw.com)

MAJOR NON-JURY MATTER

ATTORNEY FOR PLAINTIFF

MARIA CHIRICO  
1825 W. Moyamensing Avenue  
Philadelphia, PA 19145

vs.

PETSMART, INC.  
2360 West Oregon Avenue  
Philadelphia, PA 19145

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
TRIAL DIVISION

DECEMBER TERM, 2013

NO.

858120812181

CIVIL ACTION COMPLAINT

1. Plaintiff, Maria Chirico, is an adult individual who resides at 1825 W. Moyamensing Avenue, Philadelphia, PA 19145.
2. Defendant, PetSmart, Inc., is a corporation authorized to do business in the Commonwealth of Pennsylvania, with a place of business located at 2360 West Oregon Avenue, Philadelphia, Pennsylvania 19145.
3. On or about June 22, 2012, and for sometime prior thereto, defendant, PetSmart, Inc., owned, operated, managed, maintained and controlled numerous PetSmart stores in and about the County of Philadelphia, in a continuous and systematic nature, deriving financial compensation therefrom.
4. At all times material hereto, defendant, PetSmart, Inc., owned, occupied, leased, controlled and/or maintained the premises located at 2360 West Oregon Avenue, Philadelphia, Pennsylvania 19145.
5. On or about the aforesaid date, and at all times relevant hereto, defendant, PetSmart, Inc., individually and through their agents, servants, workmen and/or employees, had under their care and

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direction the supervision, control, maintenance and care of the aforesaid premises, and said defendant was under a duty to maintain the said premises in a safe condition for persons lawfully therein.

6. On or about June 22, 2012, and at all times relevant and material hereto, it was the duty of the defendant, individually and/or through its agents, servants, workmen and/or employees, to keep and maintain the said interior aisles in safe condition for plaintiff and other business invitees proceeding therein.

7. Notwithstanding this duty, defendant, by its agents, servants, workmen and/or employees, did on the date aforesaid, and for some time prior thereto, carelessly, negligently and wantonly allow and permit a dangerous and defective condition to exist, more particularly, in allowing the aisle near the cashier area to be, become and remain in a highly dangerous and defective condition, to wit: an accumulation of water and/or urine and/or other liquid and/or other foreign substance, which was located in the aisle on the property and premises known as 2360 West Oregon Avenue, Philadelphia, Pennsylvania 19145, so as to create a highly dangerous and defective condition for the plaintiff and other business invitees lawfully proceeding upon the said aisle way.

8. On or about the aforesaid date, while plaintiff, Maria Chirico, was lawfully a business invitee upon said premises, her foot did come in contact with the said water and/or urine and/or other liquid and/or foreign substance or matter, which was located in the aisle on the property and premises known as 2360 West Oregon Avenue, Philadelphia, Pennsylvania 19145, as a result of which she was caused to slip and fall to the ground as a result of which she sustained serious personal injuries, hereinafter more specifically set forth.

9. Plaintiff avers that the defendant, either individually and/or by their agents, servants, workmen and/or employees, by its action, created the aforesaid dangerous and defective condition, or in the alternative, had or should have had notice of the existence of the said dangerous and defective condition upon the premises mentioned prior to said accident, and failed to take reasonable measure to remedy said defect.

10. At the time and place aforesaid, the carelessness and negligence of the defendant,

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consisted of the following:

- (a) failing to maintain the premises in a safe condition to protect persons lawfully thereon;
- (b) permitting the premises to remain in a defective condition so as to constitute a danger, menace, nuisance and trap for persons lawfully on said premises;
- (c) failing to have inspected the premises at reasonable intervals in order to determine the condition of said premises;
- (d) knowingly permitting a dangerous and unsafe condition to exist in the said premises;
- (e) failing to properly warn persons using said premises of the dangerous and defective condition;
- (f) creating a condition which presented business invitees with a dangerous shopping area which defendant knew or should have known created a risk to shoppers;
- (g) failing to use due care and caution under the circumstances;
- (h) failing to instruct their agents, servants, workmen and/or employees as to the proper maintenance, care and control of said floor area;
- (i) disregarding the rights and safety of the plaintiff and other persons lawfully on defendant's premises;
- (j) allowing the premises to remain in a dangerous and unsafe condition;
- (k) allowing the continued use of said premises while knowing or having reason to know that it was likely to be a danger to any business invitees and/or lessees who occupied such premises;
- (l) being otherwise negligent under the circumstances;
- (m) violating the various ordinances and laws of the City and County of Philadelphia, Commonwealth of Pennsylvania, as to the maintenance, care, control and use of said pet stores; and

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Case ID: 131201440



(n) any other acts or omissions which constitute negligence and/or carelessness indifference for the safety of the plaintiff and that are discovered in the discovery process as promulgated under the Pennsylvania Rules of Civil Procedure, or at the trial of this case.

11. As a direct result of the defendant's carelessness and negligence as aforesaid, plaintiff, Maria Chirico, sustained severe and permanent internal and external injuries in and about the head, body and limbs, more particularly: mild cervical and lumbar degenerative spondylosis, moderate C6-7 and mild C5-6 loss of height, minimal multilevel degenerative arthropathy, mild multilevel hypertrophy; mild L4-5 and L5-S1 narrowing, cervical sprain/strain, lumbar sprain/strain, history of lumbar disc disease, sprain/strain of knee and leg, right contusion, left knee contusion and sprain/strain, probably internal derangement, central spinal stenosis at C6-7, which is moderate as well as bulging discs at C5-6 and C6-7, left cervical facet syndrome, left knee patellofemoral chondromalacia/osteoarthritis, patellofemoral chondrosis, focal soft tissue edema in the lateral infrapatellar fat pad, suggestive of lateral patellofemoral tracking disorder, amorphous signal alteration within the normal medial meniscus, centered at the junction of the body and posterior horn, which may be degenerative in etiology, however, a small meniscal tear cannot completely be excluded and a severe and permanent shock to her nervous system, all of which have caused her and will continue to cause her great pain and agony, and have prevented her and will continue to prevent her in the future from attending to her daily duties and occupation, all to her great financial damage and loss.

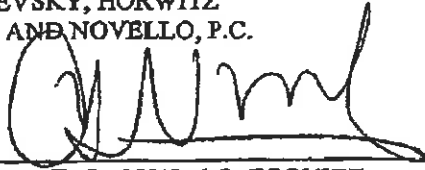
12. Further, by reason of the aforesaid, plaintiff, Maria Chirico, has been obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure herself of her said injuries, and will be obliged to expend additional sums of money for the same purposes in the future, all to her great financial damage and loss.

13. Additionally, as a direct result of the aforesaid, plaintiff, Maria Chirico, has sustained a loss of earnings and earning capacity and power, which loss of earnings and earning capacity and power has been and may continue to be to her great financial damage and loss.

14. Plaintiff avers that her injuries and damages sustained herein were caused solely as a direct result of the negligence and carelessness of the defendant, as hereinbefore set forth.

WHEREFORE, plaintiff, Maria Chirico, demands judgement against the defendant, PetSmart, Inc., in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus interest and costs.

DASHEVSKY, HORWITZ  
KUHN AND NOVELLO, P.C.

BY:   
ARTHUR S. NOVELLO, ESQUIRE  
ATTORNEY FOR PLAINTIFF

85817081718101

DASHEVSKY, HORWITZ, KUHN & NOVELLO, P.C.

VERIFICATION

I, Mania Chirico, make this verification subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities. The attached pleading is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in preparation for the prosecution of this lawsuit. The language contained in the pleading is that of counsel and not mine. I have read the pleading, and to the extent it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the pleading are that of counsel, I have relied upon my counsel in making this verification.

X Mania Chirico

Dated: 12/10/13

Case ID: 131201440

Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

		For Prothonotary Use Only (Docket Number)	
		<b>DECEMBER 2013</b>	<b>001440</b>
		E-Filed Number: 1312016992	
PLAINTIFF'S NAME MARIA CHIRICO		DEFENDANT'S NAME PETSMART, INC.	
PLAINTIFF'S ADDRESS 1825 W. MOYAMENSING AVENUE PHILADELPHIA PA 19145		DEFENDANT'S ADDRESS 2360 OREGON AVENUE PHILADELPHIA PA 19145	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdiction	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commence <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2S - PREMISES LIABILITY, SLIP/FALL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES    NO	
		FILED PRO PROTHY DEC 10 2013 K. EDWARDS	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>MARIA CHIRICO</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF/PETITIONER'S/APPELLANT'S ATTORNEY ARTHUR S. NOVELLO		ADDRESS 1315 WALNUT ST., 12TH FLOOR PHILADELPHIA PA 19107	
PHONE NUMBER (215) 546-4488	FAX NUMBER (215) 732-6220		
SUPREME COURT IDENTIFICATION NO. 46685		E-MAIL ADDRESS anovello@dashevskylaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY ARTHUR NOVELLO		DATE SUBMITTED Tuesday, December 10, 2013, 01:14 pm	

FINAL COPY (Approved by the Prothonotary Clerk)

**DASHEVSKY, HORWITZ,  
KUHN AND NOVELLO, P.C.**  
By: **ARTHUR S. NOVELLO, ESQUIRE**  
Identification No. 46685  
1315 Walnut Street, 12th Floor  
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P: (215) 546-4488  
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**MAJOR NON-JURY MATTER**

**ATTORNEY FOR PLAINTIFF**



**MARIA CHIRICO**

vs.

**PETSMART, INC.**

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
TRIAL DIVISION**

**DECEMBER TERM, 2013**

**NO.**

**NOTICE TO PLEAD**

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**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**PHILADELPHIA BAR ASSOCIATION  
LAWYER REFERRAL AND INFORMATION SERVICE  
One Reading Center  
Philadelphia, PA 19107  
Telephone: 215-238-1701**

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROVEER A USTED CON INFORMACION DE COMO ALQUILAR UN ABOGADO. SI USTED NO TIENE DINERO PARA ALQUILAR UN ABOGADO, ESTA OFICINA PUEDE PROVEER A USTED CON INFORMACION DE AGENCIAS QUE PUEDE OFRECER SERVICIOS LEGALES A PERSONAS ELEGIBLE A UN COSTO REDUCIDO O SIN COSTO NINGUNO.**

**ASOCIACION DE LICENCIADOS DE FILADELFA  
SERVICIO  
DE REFERENCIA E INFORMACION LEGAL  
One Reading Center  
Filadelfia, Pennsylvania 19107  
Teléfono: 215-238-1701**

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Case ID: 131201440

# EXHIBIT B

CLAUSEN MILLER LLP  
LONDON, ENGLAND

CLAUSEN MILLER P.C.  
CHICAGO, IL  
IRVINE, CA  
NEW YORK, NY  
FLORHAM PARK, NJ  
SHANGHAI, CHINA

**CMI**  CLAUSEN  
MILLER  
INTERNATIONAL

Clausen Miller P.C.  
Clausen Miller LLP, LONDON  
TLJ & Associés, PARIS  
Grenier Avocats, PARIS  
Studio Legale Corapi, ROME  
van Cutsem-Wittamer-Marnef & Partners, BRUSSELS  
Wilhelm Partnerschaft von Rechtsanwälten, DÜSSELDORF

**Clausen  
Miller**<sub>PC</sub>

*Attorneys at Law*

100 Campus Drive, Suite 112 • Florham Park, NJ 07932 • [www.clausen.com](http://www.clausen.com)  
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Carl M. Perri, Esq. – Managing Partner

Andrew S. Turkish  
Direct Line: (973) 410-4140  
E-Mail: [aturkish@clausen.com](mailto:aturkish@clausen.com)

January 9, 2014

**VIA FAX and REGULAR MAIL**

Arthur S. Novello, Esq.  
Dashevsky, Horwitz, Kuh and Novello, P.C.  
1315 Walnut Street, 12<sup>th</sup> Floor  
Philadelphia, Pa 19107-4712

Re: *Chirico v. PetSmart, Inc.*  
Docket No.: 131201440  
Our File Number: 23-6762-00-1

Dear Mr. Novello:

This firm represents PetSmart, Inc. PetSmart has requested that we remove this matter to Federal Court based on diversity of citizenship. As you know, the federal removal statute requires that the amount in controversy exceed \$75,000 exclusive of interest and costs. Accordingly, I kindly request that you stipulate that the total amount of damages that plaintiffs can recover in this matter is \$75,000 or less, exclusive of interest and costs. If you are unwilling to stipulate, then I will remove the matter. Enclosed is an original and two copies of a stipulation and a return envelope. Please get back to me as soon as possible. Thank you.

Very truly yours,

CLAUSEN MILLER P.C.

By:



Andrew S. Turkish

AST/mm  
Enclosure

CLAUSEN MILLER P.C.  
100 Campus Drive, Suite 112  
Florham Park, NJ 07932  
973.410.4130  
Attorneys for Defendant,  
*PetSmart, Inc.*

MARIA CHIRICO,

Plaintiff,

v.

PETSMART, INC.,

Defendant.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
TRIAL DIVISION

DECEMBER TERM, 2013

CASE ID: 131201440

**STIPULATION AS TO THE  
AMOUNT OF RECOVERABLE  
DAMAGES**

Plaintiff, Maria Chirico, through her counsel, Dashevsky, Horwitz, Kuhn and Novello, P.C., hereby stipulates that the total amount of damages she can recover in this matter cannot exceed \$75,000, exclusive of interest and costs.

Dashevsky, Horwitz, Kuhn and  
Novello, P.C.  
*Attorneys for Plaintiff*

By: \_\_\_\_\_  
Arthur S. Novello Esq.

Dated: January , 2014